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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Petition of US West Communications, Inc. )  
for a Declaratory Ruling Regarding the )  
Provision of National Directory Assistance )

CC Docket No. 97-172

REPLY COMMENTS OF  
MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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**REPLY COMMENTS OF  
MCI TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation ("MCI"), pursuant to Public Notice DA 98-532 issued by the Federal Communications Commission (the "Commission"), hereby files its reply comments regarding the Further Submission in Support of Petition for Declaratory Ruling ("Further Submission") filed by US West Communications, Inc ("US West") in the above-captioned docket regarding Bell Operating Company ("BOC") provision of National Directory Assistance service.

**INTRODUCTION AND SUMMARY**

The comments filed in response to the Further Submission of US West confirm MCI's position that National Directory Assistance is an in-region interLATA telecommunications service subject to the restrictions in Sections 271 and 272 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The commenting BOCs -- Ameritech and SBC Communications -- support US West's Further Submission and repeat statutory arguments that National Directory Assistance is not an in-region interLATA service, agreeing with US West that, if it is determined to be an interLATA service, it is an incidental

interLATA service under Section 271(g)(4) of the Act.<sup>1</sup> Further, the BOCs support US West's request that, if the Commission finds that National Directory Assistance service is an in-region interLATA service subject to the requirements of Sections 271 and 272 of the Act, the Commission utilize its forbearance authority under Section 10 of the Act and forbear from applying the separate affiliate requirements of Section 272.

As MCI has explained in previous comments, providing callers with telephone numbers of subscribers in other LATAs is an interLATA service and is thus prohibited to the BOCs unless and until they obtain in-region interLATA authority. Because National Directory Assistance is an in-region interLATA service, a BOC would only be permitted to provide such an interLATA service under one of three circumstances: (1) the BOC has received Section 271 in-region interLATA authority from the Commission under Section 271(d)(3);<sup>2</sup> (2) the service in question is an incidental interLATA service as defined by Section 271(g);<sup>3</sup> or (3) the BOC was previously authorized under the MFJ to provide the service in question.<sup>4</sup>

As MCI noted in its initial comments, depending on the Commission's classification of National Directory Assistance service, the requested forbearance will be available, unavailable or

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<sup>1</sup> In its Comments at 5-7, SBC Communications Inc. ("SBC Comments") argues that National Directory Assistance service should be classified as an incidental interLATA service under Section 271(g)(5) and thus exempt from the Section 271(d)(3) authorization requirements. In the alternative, SBC argues, National Directory Assistance service should be classified as incidental interLATA under Section 271(g)(4).

<sup>2</sup> See 47 U.S.C. § 271(b)(1).

<sup>3</sup> See 47 U.S.C. § 271(b)(3).

<sup>4</sup> See 47 U.S.C. § 271(f).

unnecessary.<sup>5</sup> For example, if the Commission determines, as MCI argues in the instant comments, that National Directory Assistance service is an interLATA service subject to Section 271 and neither previously authorized nor subject to the incidental interLATA exception in Section 271(g)(4), then the requested forbearance is not available.

Because National Directory Assistance is an in-region interLATA service for which Section 271(d)(3) authorization is required, forbearance from the application of Sections 251, 271 and 272 is not available. Accordingly, US West and all other BOCs should be prohibited from providing National Directory Assistance service unless, and until, they receive Section 271 authority. Finally, even if National Directory Assistance were an incidental interLATA service, the Commission should not forbear from the application of the Section 272 separate affiliate requirements to such service.

#### **I. NATIONAL DIRECTORY ASSISTANCE IS AN IN-REGION INTERLATA TELECOMMUNICATIONS SERVICE**

As MCI has explained in previous comments, providing callers with telephone numbers of subscribers in other LATAs is an interLATA service and is thus prohibited to the BOCs unless and until they obtain in-region interLATA authority under Section 271(d)(3) or unless they can demonstrate that such service falls within one of the exceptions to the Section 271(d)(3) authorization requirements. Moreover, as MCI has also explained in previous comments, National Directory Assistance is not exempted from the Section 271(d)(3) authorization requirements, and the Commission therefore is not authorized to forbear from the application of the separate affiliate requirements of Section 272 to such services.

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<sup>5</sup> See MCI Comments at 6-8.

In their comments, SBC and Ameritech echo the statutory definition argument put forth by US West in its Petition and Further Submission, asserting that the definitions in the Communications Act, as amended, do not allow for National Directory Assistance to be characterized as an interLATA service.<sup>6</sup> In essence, SBC and Ameritech argue that National Directory Assistance is not an interLATA service because neither “interLATA transmissions” nor “telecommunications” are involved in the provision of National Directory Assistance, and, therefore, they conclude that National Directory Assistance is not prohibited by any portion of the Act, including Section 271.

As MCI explained in its previous pleadings, however, National Directory Assistance service is clearly an in-region service and is provided, at least by US West, by means of interLATA transmissions that occur as a result of the centralized provision of such services. In addition, although Ameritech claims that its provision of National Directory Assistance is clearly not an interLATA service,<sup>7</sup> it admitted in its earlier pleadings with respect to National Directory Assistance service that its operators perform interLATA searches to retrieve National Directory Assistance listings.<sup>8</sup> Undoubtedly, these two offerings of National Directory Assistance are in-region, interLATA services under Section 271 of the Act.

More significantly, however, any National Directory Assistance service, *regardless of the*

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<sup>6</sup> See Ameritech Comments at 2; see also SBC Comments at 4.

<sup>7</sup> See Ameritech Comments at 2 n. 2.

<sup>8</sup> See Ameritech’s July 14, 1997 letter in response to the Commission’s request for more information regarding Ameritech’s National Directory Assistance offering. In the attachment to its letter, Ameritech explains that its National Directory Assistance operators perform interLATA searches in providing the service.

*interLATA components contained in the different BOC offerings*, is properly characterized as “interLATA service” under the Act. As MCI explained in its previous pleadings, the provision of interLATA services encompasses more than simply the carrying of interLATA transmissions; otherwise there would have been no need for the explicit authorization of BOC joint marketing and sale of local and interLATA services in Section 272(g)(3) to overcome the prohibition of such activities in Section 272(a)(2), which requires that certain types of “interLATA . . . services” be provided through a separate affiliate from the BOC’s local services.<sup>9</sup> Moreover, the express prohibition of marketing in Section 222(b) suggests that such activity would otherwise have been allowed as part and parcel of “providing . . . telecommunications service.” 47 U.S.C. § 222(b). These specific references in the statute carving out exceptions for marketing from the general rules otherwise covering the “provid[ing]” of “interLATA . . . services”<sup>10</sup> demonstrate that the provision of interLATA service includes much more than simply carrying a transmission across LATA boundaries.

SBC and Ameritech argue that the Act’s definition of “interLATA services” requires that a “user” select his or her termination point.<sup>11</sup> Since users make calls all the time without knowing or caring where the recipient of the call is located, this argument makes no sense. For example, consumers place 800 calls without knowing or caring about the location of the 800

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<sup>9</sup> See MCI Comments to US West’s Further Submission at 9-12; see also MCI Comments to US West’s Petition for Declaratory Ruling at 11-12; see also MCI Reply Comments at 2-7; see also MCI Initial Brief in MCI v. US West (File No. E-97-40) at 18-21.

<sup>10</sup> 47 U.S.C. § 272(a)(2).

<sup>11</sup> See SBC Comments at 4; see also Ameritech Comments at 2.

service subscriber, but that does not exempt 800 service from Section 271's prohibitions.

Similarly, National Directory Assistance service involves calls placed to a National Directory Assistance operator to request a number in another LATA; that is all the caller needs to specify for National Directory Assistance to qualify as an interLATA service.

Since the provision of "interLATA services" under the Act, however, is much broader than the BOCs recognize, and encompasses other activities necessary for the carrying of a call across LATA boundaries -- such as the marketing and sale of such services -- the BOCs' continued attempts to ignore or twist the MFJ precedents on the grounds that the MFJ's interexchange service prohibition was broader than the Act's definition of "interLATA services" fall flat. Thus, the BOCs have not demonstrated why the MFJ precedents do not offer useful guidance in interpreting Section 271's interLATA services restriction, which, like the MFJ's interexchange service ban, covers much more than the carriage of transmissions across LATA boundaries.

For example, as MCI has explained, under the MFJ, activities that comprise the business of providing long distance service -- e.g., interLATA 800 directory assistance -- were considered interLATA telecommunications services, whether or not they involved interLATA transmissions.<sup>12</sup> The same should hold true in applying the restrictions in Section 271 on the provision of interLATA services. In the instance of National Directory Assistance, because interexchange carriers (IXCs) provide long distance directory assistance and BOCs must provide

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<sup>12</sup> See U.S. v. Western Elec. Co., 627 F. Supp. at 1100, 1102, appeal dismissed, 797 F.2d 1082 (D.C. Cir. 1986) (stating that BOCs cannot engage "activities that comprise the business of providing interexchange services" -- that is, "the performance of functions that are normally and necessarily performed by those who are engaged in that business").



the information that permits IXC's to provide long distance directory assistance, BOCs would be competing with IXC's for the provision of long distance directory assistance. Thus, any provision of the telephone numbers of subscribers in other LATAs constitutes an interLATA service under Section 271 of the Act.

That a caller using a BOC's National Directory Assistance service *typically* uses such information to place interLATA calls is merely additional proof that the service is interLATA in nature. US West was correct in its original petition arguing that directory assistance is adjunct to basic based on the typical use of a number obtained from directory assistance -- namely, to place a call.<sup>13</sup> That, in a particular instance, a caller might not make a call to a number obtained from directory assistance makes no difference in categorizing directory assistance as adjunct to basic. Similarly, the actual use that a caller makes of a particular number obtained from National Directory Assistance should make no difference to its regulatory treatment. It is a simple matter to categorize a particular request for directory information as a local or interLATA directory call, based on the location of the caller and the number requested. US West and the other BOCs have no trouble dividing their directory assistance services into local and national directory assistance on that basis.<sup>14</sup>

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<sup>13</sup> See US West Petition for Declaratory Ruling at 10-12; see also SBC Comments at 2-5 (agreeing with US West that National Directory Assistance service should be classified as adjunct to basic).

<sup>14</sup> See US West Petition for Declaratory Ruling at 3 (describing the technical aspects of its National Directory Assistance service).

## **II. BOC PROVISION OF NATIONAL DIRECTORY ASSISTANCE IS NOT AN ACTIVITY PREVIOUSLY AUTHORIZED UNDER THE MFJ**

Ameritech supports US West's argument that if National Directory Assistance is an interLATA service, it is a previously authorized activity under the MFJ and thus permissible under Section 271(f).<sup>15</sup> MCI has previously addressed the same unpersuasive argument.<sup>16</sup>

The MFJ authorization to which Ameritech refers is limited in its scope, permitting the BOCs to provide only "exchange telecommunications and exchange access functions,"<sup>17</sup> including directory assistance service,<sup>18</sup> on a centralized -- and thus interLATA -- basis. Thus, the centralized provision of directory assistance authorized under the MFJ was directory assistance related to the BOCs' "exchange telecommunications" functions, or local directory assistance service. Accordingly, the provision of numbers of subscribers in other LATAs has not been previously authorized and is not within the exceptions allowed under Section 271(f) of the Act.

Under the MFJ, local directory assistance, dialed by 411, was considered a permissible "official service" that the BOCs could provide to their customers on a centralized, interLATA basis without a waiver.<sup>19</sup> In the case of directory assistance, however, the centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered;

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<sup>15</sup> See Ameritech Comments at 3; see also US West Further Submission at 13-15.

<sup>16</sup> See MCI Comments to US West's Petition for Declaratory Ruling at 8-10; see also MCI Comments to US West's Further Submission at 13-15.

<sup>17</sup> See United States v. Western Electric Co., 569 F. Supp. 1057, 1100 (D.D.C. 1983).

<sup>18</sup> Id. at 1098.

<sup>19</sup> See 569 F. Supp. at 1097, n. 175.

only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance, since only local directory assistance is within the “exchange telecommunications and exchange access functions” authorized by the Court. Moreover, the Commission has explicitly stated that “Official Services” refer to “interLATA networks that are used to manage the operation of *local exchange services*” (emphasis added).<sup>20</sup>

In fact, US West itself was denied a broader MFJ waiver for in-bound directory assistance calls from other LATAs because IXCs can provide “interLATA directory assistance by using directory information provided by US West pursuant to its access tariffs.”<sup>21</sup> Moreover, when another BOC, Bell Atlantic, attempted to expand the scope of offerings falling under the Official Services designation, it was also rebuffed. The MFJ court held that Bell Atlantic’s provision of directory assistance services to customers of independent LECs was not an Official Service and thus required a waiver.<sup>22</sup> These decisions compel the conclusion that, under the MFJ, US West and other BOCs would have needed a waiver to provide directory assistance to a caller where an IXC could have provided that service, such as a request for the number of a subscriber in another LATA, irrespective of whether the operator providing the number is in the same LATA as the caller. Therefore, under MFJ precedent, no provision of National Directory Assistance,

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<sup>20</sup> See Non-Accounting Safeguards Order at n. 666.

<sup>21</sup> See United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. October 30, 1984), slip op. at 4.

<sup>22</sup> United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. February 6, 1984); See also United States v. Western Elec. Co., 569 F. Supp. at 1097 (D.D.C. 1983); See also id. at 1102 (holding that “[i]t is abundantly clear . . . that this particular directory assistance is an interexchange, interLATA service which is appropriately assigned to AT&T.”).

including US West's National Directory Assistance service, would be classified as an "exchange telecommunications" Official Service exempt from the interLATA prohibition.<sup>23</sup>

It should also be noted that the rationale for allowing the BOCs to retain and utilize interLATA Official Services facilities does not apply to the provision of a National Directory Assistance service. The MFJ court was concerned with efficiency losses associated with reconfiguring directory assistance systems that served a major portion of a state or at most an entire state,<sup>24</sup> but not a directory assistance network that can retrieve telephone numbers nationally. Further, as noted above, "official services" refer to "interLATA networks that are used to manage the operation of *local exchange services*" (emphasis added).<sup>25</sup> National Directory Assistance service does not relate to its operation of local exchange services; rather, National Directory Assistance enables subscribers to make interLATA calls and thus is "adjunct to" that basic interLATA service, not to local exchange service.<sup>26</sup> Therefore, US West's National Directory Assistance service, and any other BOC National Directory Assistance service provided prior to in-region interLATA authority, is offered without prior authorization under the MFJ and thus in violation of Section 271 of the Act.

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<sup>23</sup> In its comments, AT&T argues further that National Directory Assistance does not qualify as an "official service." See AT&T Comments at 6-9.

<sup>24</sup> 569 F. Supp. at 1098.

<sup>25</sup> See Non-Accounting Safeguards Order at n. 666.

<sup>26</sup> AT&T's argument in its comments at 2-3 further demonstrates that National Directory Assistance service does not qualify as an exchange access service. Further, AT&T explains that "it is a misnomer [for US West] to speak of residential customers and other switched services providers as 'using' US West's access services . . . ."

### III. NATIONAL DIRECTORY ASSISTANCE IS NOT AN INCIDENTAL INTERLATA SERVICE

Ameritech, supporting US West's position, also argues in the alternative that if National Directory Assistance service is an interLATA service, it should be classified as an incidental interLATA service under Section 271(g)(4) and thus exempt from the Section 271(d)(3) authorization requirements.<sup>27</sup> Such a comparison is simply wrong. As MCI noted in its initial comments, the Commission's determination in the BOC Forbearance Order that the BellSouth reverse directory service fell "squarely within section 271(g)(4) of the Act"<sup>28</sup> referred to BellSouth's electronic reverse directory assistance, which is a purely electronic system by which BellSouth callers can retrieve stored electronic information without the intervention of a BellSouth operator.<sup>29</sup> The BOCs' provision of National Directory Assistance service, however, goes beyond the mere electronic retrieval of stored information because it involves live operator intervention.

Both the BOC Forbearance Order and Section 271(g)(4) contemplate the *electronic* retrieval of information stored in a central computer. The scope of services permitted under the 271(g)(4) exception should not be expanded to include services that utilize intervening operators. Indeed, Section 271(h) states that "[t]he provisions of subsection (g) are intended to be narrowly

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<sup>27</sup> See Ameritech Comments at 3-4.

<sup>28</sup> See In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220, (BOC Forbearance Order) (rel. Feb. 6, 1998) at ¶ 68.

<sup>29</sup> See MCI Comments to US West's Further Submission at 16-17.

construed.” 47 U.S.C. § 271(h). Moreover, the Non-Accounting Safeguards Order<sup>30</sup> clearly contemplated that incidental interLATA services within the meaning of Section 271(g)(4) are electronic database retrieval services, which are typically information services.<sup>31</sup> Ameritech, therefore, is simply wrong when it argues that “[t]he fact that a live operator may facilitate the customer’s retrieval of information . . . is irrelevant. . . .”<sup>32</sup>

Likewise, SBC is incorrect in its argument that National Directory Assistance, if it were found to be an interLATA service, should be categorized as an incidental interLATA service under Section 271(g)(5) of the Act.<sup>33</sup> Section 271(g)(5) contemplates electronic “signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier.” 47 U.S.C. § 271(g)(5). SBC’s example of the Line Information Data Base (LIDB) query used to validate a local or intraLATA LEC calling card call is clearly not analogous to National Directory Assistance.<sup>34</sup> First, the LIDB query involves no

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<sup>30</sup> See In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, at para. 107, CC Docket No. 96-149, FCC 96-489, rel. December 24, 1996, (“Non-Accounting Safeguards Order”); on recon. 12 FCC Rcd. 2297 (1997); on further recon., Second Order on Reconsideration, FCC 97-222, rel. June 24, 1997.

<sup>31</sup> See id. at ¶ 121.

<sup>32</sup> See Ameritech Comments at 4.

<sup>33</sup> See SBC Comments at 5-7. Moreover, SBC’s attempt to analogize National Directory Assistance service with Southwestern Bell’s DirectLine Customer service falls flat. DirectLine Customer service is a purely electronic retrieval of stored information from an end-user’s remote computer. See SBC Comments at 3-4.

<sup>34</sup> See SBC Comments at 5-6.

operator interaction; rather, the entire validation process is purely electronic.<sup>35</sup> Further, the described LIDB query is not initiated by a calling party in an attempt to retrieve stored information. Moreover, and importantly, the LIDB query described by SBC is limited to local and intraLATA services.<sup>36</sup> Finally, the LIDB query falls into the exception under 271(g)(5) because it relates to a BOC's provision of local exchange services and local exchange access. As MCI has shown in its filings in this proceeding, the provision of National Directory Assistance is an in-region interLATA service. National Directory Assistance service does not relate to its operation of local exchange services; rather, National Directory Assistance enables subscribers to make interLATA calls and thus is "adjunct to" that basic interLATA service, not to local exchange service.

As an additional matter, Section 271(h) requires that the Commission "ensure that the provision of services authorized under subsection (g) by a [BOC] or its affiliate will not adversely affect. . . competition in any telecommunications market." As MCI explained in its initial comments, permitting the BOCs to provide National Directory Assistance pursuant to the Section 271(g)(4) incidental interLATA exception on an integrated basis presents significant

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<sup>35</sup> SBC argues that the *de minimis* contact that occurs between the operator for National Directory Assistance service and the calling party does not "convert the service being provided to the customer into an interLATA service." SBC Comments at 7. MCI does not agree with SBC's classification of the operator's role as *de minimis*. Indeed, if the Commission were to create a *de minimis* exception for National Directory Assistance, then the operator's role could be expanded to permit call completion, which would certainly be in-region interLATA service

<sup>36</sup> In its comments, AT&T points out that National Directory Assistance is not an "exchange access" service. See AT&T Comments at 2-4. AT&T explains that National Directory Assistance is "a stand-alone offering, not a component of exchange access, as is clear from the fact that AT&T also offers a national directory assistance service, '00 INFO,' in its capacity as an IXC." Id. at 3.

potential for unreasonable and discriminatory practices on the part of the BOCs.<sup>37</sup>

**IV. IF NATIONAL DIRECTORY ASSISTANCE WERE AN INCIDENTAL INTERLATA SERVICE, THE COMMISSION STILL SHOULD NOT GRANT THE REQUESTED FORBEARANCE**

In addition to their arguments that they ought to be permitted to provide National Directory Assistance service, Ameritech and SBC agree with US West, that if National Directory Assistance is an incidental interLATA service but not previously authorized and thus subject to the separation requirements of Section 272 of the Act, the Commission should forbear from applying the separate affiliate requirements of Section 272, thus allowing National Directory Assistance to be provided on an integrated basis with its local exchange service.<sup>38</sup> Of course, MCI believes that the Commission need never reach this issue, since the BOCs should not be permitted to provide National Directory Assistance service under any conditions, prior to receipt of in-region interLATA authority under Section 271(d)(3). If, however, the Commission finds that the BOCs may provide National Directory Assistance service in the absence of such authorization because it is an incidental interLATA service, the Commission should not forbear from applying the separate affiliate requirements of Section 272.<sup>39</sup>

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<sup>37</sup> See MCI Comments to US West's Further Submission at 17-24.

<sup>38</sup> See Ameritech Comments at 4-6; see also SBC Comments at 7-9.

<sup>39</sup> The Commission does not have authority to grant a request for forbearance from the Section 272 separate affiliate requirements as to interLATA services for which authorization is still necessary under Section 271(d)(3), since Section 271(d)(3)(B) requires a showing of compliance with Section 272 as a prerequisite for receipt of Section 271 authority. See BOC Forbearance Order at ¶ 22. As the Commission explained in the BOC Forbearance Order, "prior to their full implementation [the Commission] lack[s] authority to forbear from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3)." Id.



Any BOC provision of National Directory Assistance service presents anticompetitive problems that will be exacerbated if the Commission permits the BOCs to provide such service on an integrated basis.

**1. National Directory Assistance Service is an Anticompetitive BOC Offering**

Nonlocal directory assistance, by its very nature and definition as an interLATA service, is a fully competitive service. US West and the other BOCs are simply attempting to enter the competitive nonlocal directory assistance market prior to receiving the appropriate in-region interLATA authority under Section 271. The BOC provision of National Directory Assistance introduces an illegal and discriminatory alternative that no other carrier can offer either through the simplicity and ubiquity of the "411" dialing pattern or with the accuracy of the directory assistance database derived from the BOCs' monopoly positions.

In fact, SBC's reference to AT&T's National Directory Assistance through the "00" dialing pattern merely shows the competitive advantage the BOCs enjoy in providing National Directory Assistance service via the "411" dialing code.<sup>40</sup> Because the IXCs are not given access to the "411" dialing code in providing National Directory Assistance, the BOCs are able to take full advantage of their control over that familiar dialing pattern.

These anticompetitive advantages inherent in the BOCs' use and control of the "411" access code -- and the anticompetitive advantages detailed below -- would be greatly aggravated if they were permitted to provide National Directory Assistance service on an integrated basis.

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<sup>40</sup> See SBC's *ex parte* letter dated March 20, 1998, at 6.

**2.     The Requested Forbearance Does Not Pass the Safeguard Checklist  
in Section 10**

Assuming *arguendo* the Commission could utilize its powers under Section 10 of the Act to consider the requested forbearance from the separate affiliate requirements of Section 272, the BOCs' forbearance requests would not pass the threshold competitive determinations to be made by the Commission under Section 10. Under Section 10(b) of the Act, before making any determination to apply regulatory forbearance, the Commission must consider "whether forbearance will promote competitive market conditions -- including the extent it will enhance competition among providers of telecommunications services."<sup>41</sup> In addition, forbearance is to be granted by the Commission only where it determines that the following three requirements will be satisfied: (1) enforcement of such regulation is not needed to ensure just, reasonable and nondiscriminatory practices with respect to telecommunications carriers or the service in question; (2) enforcement of such regulation is not required for consumer protection; and (3) forbearance from applying such regulation is consistent with the public interest. 47 U.S.C. § 160(a)(1)-(3).

Permitting the BOCs to provide National Directory Assistance service on an integrated basis would stifle competition and permit the BOCs to extend their monopoly local bottleneck powers into the interLATA market. There would be no basis for ensuring just, reasonable and nondiscriminatory practices by the BOCs. Moreover, the lack of disincentives for discrimination would not afford consumers the protections that would otherwise be developed by competitive alternatives. Accordingly, the preliminary hurdle presented by Section 10(b) of the Act cannot

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<sup>41</sup> See S. Rpt. 104-23, 104th Cong. 1st Sess. 50-51 (1995); see also 47 U.S.C. § 160(b).

be cleared in the case of the BOCs' provision of National Directory Assistance service on an integrated basis.

Moreover, the three criteria from Section 10(a) of the Act cannot be met with respect to the requested forbearance. Section 10(a)(1) of the Act requires the Commission, before granting forbearance from any regulatory restriction, to make an affirmative determination that the enforcement of such regulation is not needed to ensure just, reasonable and nondiscriminatory practices with respect to telecommunications carriers or the service in question.<sup>42</sup> 47 U.S.C. § 160(a)(1). As MCI explained in its initial comments, an example of the unreasonable and discriminatory practices that would continue if US West were granted forbearance from the Section 272 separate affiliate requirements can be seen in US West's claim that it will make available the "411" or "1-411" access code to any CLEC "purchasing switching from US West or reselling US West's local exchange service."<sup>43</sup> US West and the other BOCs are required to have the ability to route "411" calls to the presubscribed carrier's own directory assistance platform. The BOCs have failed to conform to that standard and obligation.

Further, under Sections 251 and 252 of the Act, MCI and other IXC's have a right to dialing parity and unbundled network elements.<sup>44</sup> This right includes nondiscriminatory access

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<sup>42</sup> In addition, Section 10(a)(2) requires the Commission to decide whether enforcement of such regulation is required for consumer protection. Further, Section 10(a)(3) requires the Commission to make an affirmative finding that forbearance from applying such regulation is consistent with the public interest. It is MCI's position that, because Section 10(a)(1) cannot be satisfied, US West's forbearance request is fatally flawed, and the Commission would not need to address the other questions under Section 10(a) in order to deny the requested forbearance.

<sup>43</sup> See MCI Comments to US West's Further Submission at 17-24,

<sup>44</sup> 47 U.S.C. §§ 251 and 252.

to each BOC's subscriber listing and directory assistance databases, including, but not limited to, the ILEC listings in each BOC's region. Further, Section 251(b)(3) imposes a duty on each and every LEC to provide all carriers with access to its directory assistance and directory listings databases on a nondiscriminatory basis.<sup>45</sup> US West and the other BOCs are required to provide MCI and all other carriers with nondiscriminatory access to all listings that they provide through their directory assistance services; however, the BOCs have not provided MCI with access to all of the listings they use in providing directory assistance services. In the case of US West, for two years, MCI has asked for and has been denied access to National Directory Assistance as a unbundled network element. In failing to provide access to this unbundled network element, US West violates Sections 251(b)(3), 251(c)(3) and 252 of the Act.<sup>46</sup>

Moreover, Section 251(b)(3) of the Act states that each LEC has the duty to permit each competing provider of telephone exchange service and telephone toll service "to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and

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<sup>45</sup> See 47 U.S.C. § 251(b)(3).

<sup>46</sup> See First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 at paras. 313, 538, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-235 (rel. Aug. 8, 1996), aff'd in part and rev'd in part on other grounds sub nom. Iowa Utilities Bd. v. FCC, No. 96-3321 and consolidated cases (8th Cir. July 18, 1997); See also Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 at paras. 118, 141, 143, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-333 (rel. Aug. 8, 1996), aff'd in part and rev'd in part on other grounds sub nom. California Pub. Util. Comm'n v. FCC, No. 96-3519 and consolidated cases (8th Cir. Aug. 22, 1997).

directory listing, with no unreasonable delays.”<sup>47</sup> Because it contains no limiting language, Section 251(b)(3) should be read to impose on each LEC the duty to provide MCI and all other carriers with access to all listings to which each LEC has access. If US West and the other BOCs cannot provide MCI with access to all of the listings accessed and used by the BOCs, then they should be foreclosed from using such listings.

Each LEC’s failure to provide MCI with nondiscriminatory access to all of the listings it provides through all forms of directory assistance, including National Directory Assistance, constitutes an anticompetitive and unreasonable practice. US West and the other BOCs possess such a complete directory assistance database only because of their positions as monopoly local service providers throughout their vast service regions.<sup>48</sup> Because the BOC provision of National Directory Assistance service presents several discriminatory and anticompetitive problems, the requested forbearance should not be granted.

**V. RESTRICTIONS ON BOC PROVISION OF NATIONAL DIRECTORY ASSISTANCE SERVICE DO NOT RAISE FIRST AMENDMENT CONCERNS**

In its comments, SBC argues that any restriction placed on its ability to provide National Directory Assistance service, including any condition that it provide such service pursuant the separate affiliate requirements of Section 272, raises serious First Amendment concerns.<sup>49</sup>

If the Commission determines, as MCI has argued, that National Directory Assistance

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<sup>47</sup> 47 U.S.C. § 251(b)(3).

<sup>48</sup> See BOC Forbearance Order at ¶¶ 81, 82.

<sup>49</sup> See SBC’s *ex parte* letter dated March 20, 1998. In its letter at page 5, SBC states “SBC’s BOCs have a first amendment right to communicate with their customers.”

service is an in-region interLATA service subject to the authorization provisions of Section 271(d)(3), then no legitimate First Amendment concerns exist. Because the provision of National Directory Assistance service should be restricted like all other services prohibited to each BOC under Section 271 unless and until the BOC receives Section 271 authority, the provision of National Directory Assistance service can be restricted without violating the First Amendment. Indeed, the government is permitted to restrict commercial speech where it “asserts a substantial interest in support of [a] regulation, the regulation advances that interest, and the regulation is narrowly drawn.”<sup>50</sup> Here, the challenged restriction advances the “substantial” government interests of promoting fair competition.<sup>51</sup>

Moreover, if the Commission were to determine that National Directory Assistance is an incidental interLATA service under Section 271(g)(4) of the Act and that such service must be provided in accordance with the separate affiliate safeguards in Section 272 of the Act, then such a requirement would be justified for the above-described reasons. Any determination by the Commission that BOCs adhere to the strict separate affiliate safeguards contained in Section 272 of the Act -- especially in light of the potential significant problems regarding discrimination and

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<sup>50</sup> See In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (rel. Feb. 26, 1998) at ¶¶ 43 and 106 (citing Central Hudson Gas and Elec. v. Public Serv. Comm’n, 447 U.S. 557, 563 (1980)).

<sup>51</sup> See *id.* at ¶ 107 (citing Turner Broad. Sys., Inc., v. FCC, 512 U.S. 622, 663 (1994) [“the Government’s interest in eliminating restraints on fair competition is always substantial, even when the individuals or entities subject to particular regulations are engaged in expressive activity protected by the First Amendment”]).

competition as explained above -- can be upheld on the basis that such a restriction promotes the substantial governmental interests of promoting fair competition.

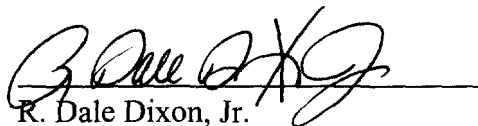
### CONCLUSION

National Directory Assistance service is an in-region interLATA service for which Section 271(d)(3) authorization is necessary; therefore, forbearance from the application of Sections 251, 271 and 272 is not available. Accordingly, US West and all other BOCs should be prohibited from providing National Directory Assistance service unless, and until, they receive Section 271 authority. Moreover, even if National Directory Assistance were an incidental interLATA service, the Commission should not forbear from the application of the Section 272 separate affiliate requirements to such service.

WHEREFORE, MCI respectfully requests that the Commission promptly deny the requests of US West and dismiss its petition. The relief sought in the petition would violate existing law and regulations.

Respectfully submitted,  
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Dated: April 23, 1998

## CERTIFICATE OF SERVICE

I, R. Dale Dixon, Jr., hereby certify that a true copy of the foregoing "REPLY COMMENTS" was served this 23rd day of April, 1998, by hand delivery or by first-class United States Mail, postage prepaid, upon each of the following persons:

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